

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13426 of Kallian, N.V., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to continue to operate a parking lot and a variance from the prohibition against all day commuter parking (Sub-paragraph 4101.413) in an SP-2 District at the premises 460 Massachusetts Avenue, N.W., (Square 517, Lots 849,850,45,851,866,867,872,873, 31,33,34 and 43).

HEARING DATE: February 11, 1981
DECISION DATE: March 4, 1981

FINDINGS OF FACT:

1. The subject Square 517 is bounded by Massachusetts Avenue, 4th, 5th and H Streets, N.W. The parking lot is located in the northern part of the square along Massachusetts Avenue. Two twenty foot wide public alleys border the lot on the east and south. The subject property is known as 460 Massachusetts Avenue and is in an SP-2 District.
2. The site is presently used as a commercial parking lot as last approved by the Board of Zoning Adjustment in BZA Application No. 12868 for a period of two years. Commercial parking lot use of the subject site was established in BZA Application No. 9032 on February 10, 1967. The Board permitted continuation of this use in Application Nos. 10443 and 12040, although portions of the lot were previously established in Applications 5154 and 6959 beginning in 1958.
3. As a preliminary matter in the case, counsel for the applicant requested a waiver of the provisions of Section 3.5 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment requiring the presence of the owner of the lot at the public hearing. A letter dated February 9, 1981 was submitted to the Board stating that the owner would not be in the country on the day of the hearing due to circumstances beyond his control. The Board agreed to waive the Rule and hear the case.
4. The property included in this application is approximately 33,000 square feet in area and provides surface parking for 132 cars. The lot is operated on weekdays only. The hours of the operation of the lot are 6:30 a.m. to 5:30 p.m. with an attendant present during the hours of 6:30 a.m. to 4:30 p.m. Maintenance is on a daily basis and the lot is periodically policed during the day. Neither the owner nor the operator of the lot, RBI Parking Inc., have received any complaints concerning the operation of the lot. RBI, Inc. is the present operator of the subject parking lot. It operates under a month-to-month lease.

5. The subject square and vicinity contain a mixture of uses. South of the alley which forms the south boundary of the lot, fronting on H Street is a federally-funded facility for the elderly known as Judiciary House. To the east of the lot on Massachusetts Avenue are three story row dwellings which appear to be used for residential purposes, a D.C. Fire Department facility and restaurant. To the south of the subject site on the western side fronting on H Street are church and professional office uses. Across Massachusetts Avenue is a small triangular park, the House of Ruth and a number of residential and commercial uses.

6. The representative of the applicant testified that prior to purchase of the site in 1979 the subject property had been actively on the market for over ten years but that there were no purchasers for development in accordance with the existing zoning. The present applicant was not the applicant in the prior BZA Application No. 12868.

7. The applicant, through the letter dated February 9, 1981, accepted for the record, stated that it intends to file an application shortly with the Zoning Commission for a Planned Unit Development or change in zoning for the site to allow development of a mixed use structure on the site. The site is located within the Hotel Incentive Overlay Zone recently approved by the Zoning Commission.

8. The applicant requests the special exception to continue use of the parking lot for a period of two years from January 6, 1981, the expiration date of outstanding Certificate of Occupancy No. B115819. The representative of the applicant by affidavit dated February 25, 1981, stated that continuation of the parking lot use is the only reasonable short-term use of the property while the application for development of a retail/hotel mixed use project is being processed. It is the applicant's desire to continue to utilize the subject premises for parking purposes until the Zoning Commission application is approved and construction commences. Otherwise, the site will remain idle with no return to the applicant.

9. The applicant's expert traffic witness testified that Massachusetts Avenue has a volume of 22,000 cars daily and that the noise generated by the subject 132 cars now using the parking lot is negligible compared with that generated by the existing traffic flow of this major artery. The high rise residential structure to the south of the subject lot and other residential uses in the square are more affected by noise from the traffic flow along this arterial and along H Street and by the noise generated by the General Accounting Office located across the street to the south than they are by the applicant's continued parking lot use. The witness further testified that the location of the subject site does not generate short term parking uses. Another parking lot at 6th and E Streets serves the short term uses for the Court buildings and the D.C. Government buildings. Hecht's department store has its own parking structure for short term users. He further testified that the traffic patterns are such that short term users will not walk five or six blocks from a parking site to their destination whether it be shopping or official business.

There was further testimony that there are few retail facilities or residential uses in the vicinity which would generate sufficient short-term parking demand to permit reasonable utilization of the subject lot. The Board so finds.

10. A majority of the present users of the subject lot are all-day commuter parkers who work at the GAO office building one block distance from the site or the D.C. Government office building on H Street. Some of these are in and out of the lot during the business day with no additional parking charge for leaving and returning the same day. The subject lot is also used for overnight residential parking for approximately ten paying customers on a monthly basis. Nonpaying residential users of the lot include residents of nearby Judiciary House and other nearby apartments. On Wednesday nights and Sundays the lot is used by the congregation of the Corinthian Baptist Church at the northwest corner of Fifth and H Streets. There was testimony that due to the inadequacy of the present mass transit system and the presence of the General Accounting Office Building which provides only one parking space for each eight employees, there is a substantial need for all day commuter parking in this sector of the city.

11. The applicant, accordingly, seeks variance relief from the requirement of Sub-paragraph 4101.413 prohibiting all day commuter parking on this site. The SP Regulations no longer permit the operation of this lot for such all-day commuter parking service.

12. By testimony at the hearing and through the affidavit of a representative of the applicant, the applicant testified that it intends to make diligent attempts to develop the subject site within the near future, market conditions permitting. The applicant stated that if the present application is denied pending disposition of its case before the Zoning Commission for PUD approval or other approval, the applicant will be left with no reasonable use of its property. Failure to receive any interim return whatsoever on this site will not be conducive to encouraging the redevelopment of this site, and will only work an economic hardship on the applicant.

13. The applicant, at the request of the Board submitted an affidavit after the public hearing, setting forth in detail the economic loss to the applicant and to the District of Columbia which will be incurred if the relief requested herein is denied. The site is assessed at \$34,760.39 for property taxes. RBI collects \$700.00 per month in taxes for the D.C. Government for its operation.

14. Advisory Neighborhood Commission - 2C made no recommendation on this application.

15. Petitions in support of continuation of the lot signed by numerous office workers in the adjacent area and a letter of support from the Corinthian Baptist Church in support of continuation of the lot were entered into the record.

16. There was no opposition to the granting of this application at the public hearing or of record.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking a special exception and a variance. As to the special exception the Board concludes that the applicant has substantially met the requirements of Paragraph 4101.41 of the Zoning Regulations. The subject parking lot had been in existence on October 5, 1978 under approval of the BZA. Pursuant to Sub-section 4101.411, the use is not likely to be objectionable to adjoining property owners because of noise, traffic or other objectionable conditions due to the location of the subject site and surrounding uses including the GAO building and Massachusetts Avenue. Pursuant to Sub-section 4101.412, the present character and future development of the neighborhood will not be affected adversely by the use because of its nature of operation, use as a facility which serves both local residents and commuters and existence as an interim use. Pursuant to Sub-section 4101.413, the lot is used in part for residential parking and for parking for the Corinthian Baptist Church.

The applicant complies with the provisions of Sub-section 8207.2 because the proposed continued use of the site for parking purposes for a limited period of time is in harmony with the general purposes and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring properties.

As to the variance, the Board concludes that the requested variance is a use variance, because the variance requested relates to the manner in which the parking spaces will be used. In order to grant a use variance, the applicant must demonstrate that there is an undue hardship upon the owner arising out of some unique or exceptional condition of the property. The Board concludes that the subject site has no other reasonable use than the continuation of the existing parking facility. The Board concludes that there are not sufficient facilities in the area to generate enough demand for short-term parking and that restriction of use of the lot to other than commuter parking only would create a hardship for the owner.

The Board further concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The proposed parking lot use because of its nature of operation will not adversely affect the present character and future development of the neighborhood. The lot abuts a major arterial road and a fire station across its alley to the

east. In addition, as evidenced by the letters and petitions submitted in this case, there is a need for this lot which services many uses. Therefore, this use, as further conditioned by this Order, is appropriate for the site.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:


1. Approval shall be for a period of TWO YEARS from the date of expiration of the previous Certificate of Occupancy, namely January 6, 1981.
2. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
3. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
4. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
5. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and order appearance.
6. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is permitted in the zoning district in which the parking lot is located.
7. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-1 (Walter B. Lewis, William F. McIntosh and Connie Fortune to grant, Charles R. Norris to grant by proxy, Douglas J. Patton opposed).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 18 JUN 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATION OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.